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VIRGINIA LAW REGISTER.

VOL. IV.]

APRIL, 1899.

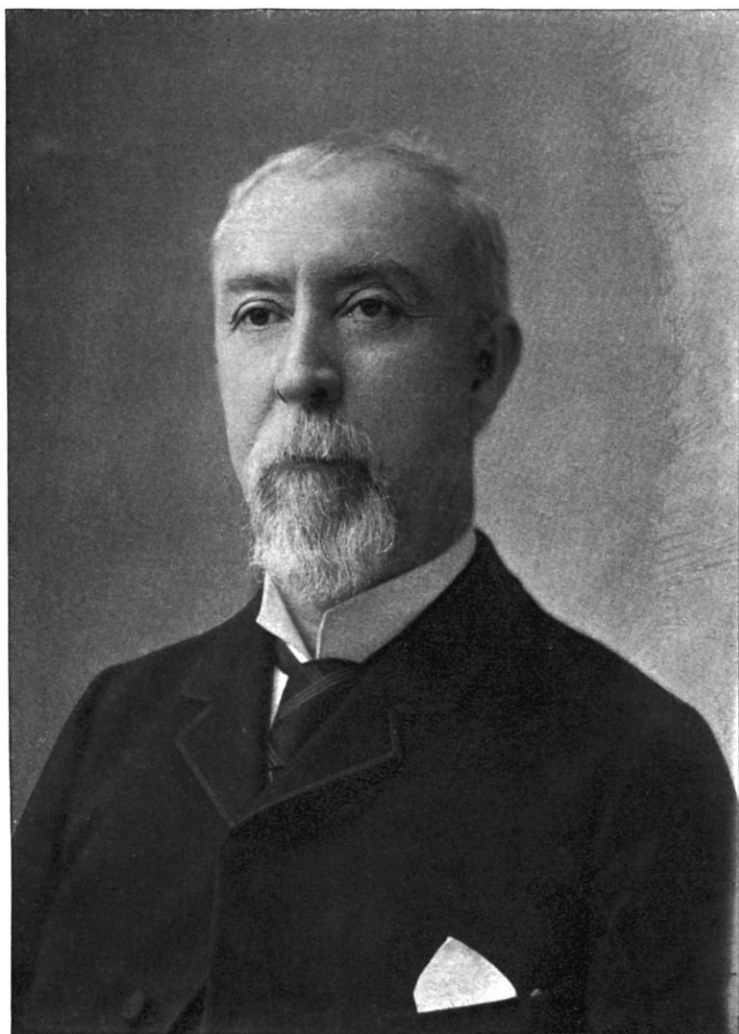
[No. 12.]

ROBERT TAYLOR SCOTT,

LATE ATTORNEY-GENERAL OF VIRGINIA.

In preparing this sketch of the life and character of the late Attorney General R. Taylor Scott, I am somewhat embarrassed by the fact that there have been published so many tributes to his intellectual worth and high Christian character from others who were more intimately associated with his rise and progress at the bar than it was ever my privilege to be. The memorial and resolutions of the Richmond City bar relative to his death, and which constitute the preface to 95th Virginia, were prepared by the Hon. James Keith, his lifelong friend. This distinguished jurist, in speaking of him, says: "For myself I cannot recall the time when the ties that bound us together were first formed. In the very dawn of my memory he was my friend, and so remained amid all the vicissitudes of life without 'variableness or shadow of turning,' until he was called to enjoy, I trust in a higher state of existence, the reward of a life devoted to the faithful discharge of every duty. I shall have no occasion to exaggerate his virtues. I need not, indeed, indulge in those terms of eulogy which custom sanctions when we are speaking of the dead. I have but to tell you the story of his life, to portray to you the man as he walked among us, and as I knew him to be—so brave in adversity, so modest in prosperity, so true to every trust, so just and upright in all his dealings, whose life was governed by principle, and who walked with conscience as his guide." For the purposes of this article I shall use the epitomized biography of Major Scott, prepared also by Judge Keith, and found in the same memorial and resolutions, which is as follows:

"Robert Taylor Scott was the son of Robert Eden Scott, whose reputation as a statesman and lawyer is a part of the history of this commonwealth, and who met his death in 1862 in the chivalric endeavor to protect the defenceless women and children of Fauquier



R. TAYLOR SCOTT.

from the depredations of deserters and marauders who infested that section. His grandfather was Judge John Scott, who has had few equals and no superiors upon the bench of this State. His mother was Elizabeth Taylor, daughter of Robert I. Taylor, of Alexandria, of whom Chief Justice Marshall once said that his arguments were models of excellence; he never said one word too much or a word too little. His mother died when he was only a few days old, but this can scarcely be reckoned, in his case, as a misfortune, for he was nurtured and reared in the family of his father's mother, a woman worthy to have been a Roman matron in Rome's palmiest days. He was educated in the public schools of Warrenton and Alexandria, and for a time at a private school in his father's house, and in 1851 he entered at the University of Virginia, where he remained for four sessions. Having thus acquired an excellent classical and professional education, he, in 1856, commenced the practice of law in Warrenton. He succeeded from the first, and in 1858 he married Miss Frances Carter, eldest daughter of Richard H. Carter, of Fauquier. In 1861, upon the breaking out of the war, he organized a company of infantry, of which he was the captain, and which was mustered into service with the Eighth Virginia Regiment, under Eppa Hunton as its colonel, and served with it until he was put upon the staff of his kinsman, Gen. George E. Pickett, with the rank of major, where he remained until 1865. The war ended, he returned to Warrenton, and at once entered upon a lucrative practice. In 1867 he was elected a delegate to the Constitutional Convention, and in 1881 was chosen to represent the counties of Loudoun and Fauquier in the General Assembly. In 1889 and 1893 he was nominated for Attorney-General of Virginia, and was on both occasions elected by great majorities. He was a candidate for a third nomination under circumstances which encouraged his friends to believe that he would be chosen to succeed himself."

Without going into any discussion of the claims of heredity as being potential in the shaping of human character and human destiny, and without fully subscribing to the doctrine that "the source of genius is oftentimes in ancestry, and the blood of descent is the prophecy of destiny," suffice it to say that it was in the very fitness of things that Major Scott should have chosen the law for his calling. In fact it would have been difficult with such forbears for him to have aspired to any other profession.

His grandfather is described by the late John Randolph Tucker as having "the name and face of Lord Eldon" and as being one of the

ablest judges in the country. Of his father, Robert E. Scott, Mr. Tucker said that, in addition to his distinguished services to his State in the Constitutional Convention of 1850 and in the memorable Secession Convention of 1861, he was one of the most powerful speakers he had ever heard, and had no superior at the bar as a lawyer and advocate.

If on the one hand the brilliant careers of his ancestors were an inspiration and a stimulus to the exertions of Major Scott in his attempt to win for himself triumphs before the courts and juries of his State, they were also somewhat of a drawback, for, naturally, there came the comparison which the public made between the son and his illustrious father and grandfather without taking into account the difference in age and experience, and which often necessarily resulted to the disadvantage of the young practitioner. He commenced the practice of the law, too, at a time when the Loudoun and Fauquier bar was known far and wide for the ability and splendid character of its members, a prestige which, I am glad to say, it retains to the present day. On its roll were Robert E. Scott, Samuel Chilton, the Paynes, James V. Brooke, Eppa Hunton, the Harrisons of Loudoun, John Janney of the same county, and others, each of whom was an honor to the profession, among them being some whose attainments and character entitled them to be numbered among the foremost lawyers of the State. In competition with such men, Major Scott succeeded from the beginning, and, when the war broke out, he gave up a substantial practice and tendered his services to his mother State; and, whether as a captain of infantry or as major and aid-de-camp on the staff of his kinsman, General George E. Pickett, he faithfully and with conspicuous gallantry performed every duty and braved every hardship that it was the lot of those who followed the lead of Robert E. Lee to bear and endure. There is but one incident connected with his army life to which I shall allude, for his conscientious discharge of duty on many a hard-fought field is a part of the history of the heroic struggle of the Confederate soldier from 1861 to 1865, which will be eagerly read by succeeding generations so long as a soldier's valor is considered worthy of praise and a soldier's virtue is deserving of emulation. The incident to which I refer is thus told by his first commander, the brave General Eppa Hunton:

“In the early spring of 1862 General Johnston evacuated Centreville to meet a threatening move of General McClellan on Richmond by way of the Peninsula. General Johnston retired to Orange Court-

house, and camped a short time at Camp Taylor, on the Fredericksburg plank road. The Eighth Regiment had then been brigaded with the Eighteenth, Nineteenth and Twenty-eighth Regiments, and placed under the command of the gallant General George E. Pickett. While he was at Camp Taylor, Major (then Captain) R. T. Scott gave his heart to his Saviour, and was baptized by Chaplain Granberry, now a prominent Bishop of the Methodist Episcopal Church, South. It was one of the most interesting and weird scenes I ever witnessed. It was night; darkness overspread the earth. The camp of Pickett's brigade was brilliantly lighted with camp fires, and in the midst of the veteran soldiers of that gallant brigade Robert Taylor Scott (as gallant as any of them) declared himself a soldier of 'the cross' also, with soldiers and muskets around him and the blue sky above him. He was, during the rest of the war, a consistent Christian soldier."

At the close of the war he renewed the practice of his profession, and in 1866 formed a partnership with the late James V. Brooke, under the firm name of Brooke & Scott, which continued for a period of twenty-seven years. This firm soon acquired a lucrative practice in the counties of Fauquier and Loudoun, and were on one side or the other of nearly all of the important cases tried in either of these rich and populous counties. Among the great cases in which they appeared at *nisi prius* was the Hickson will case, tried in the Circuit Court of Loudoun, in which they met the assembled strength of the bar of that section, and were successful. It was a stubbornly-fought will case, involving a large amount of property, the trial of which consumed many days, but against overwhelming odds, Major Scott and his able and accomplished partner came off victorious. Another case won by this firm at *nisi prius* was the case of *Meem v. Dulaney*, but, on appeal, this was reversed, 88 Va. 674. I mention Major Scott's connection with this case because of the fact that, in the case of *Munford v. McVeigh* (92 Va. 446) the present Court of Appeals reviewed and overruled the doctrine of *Meem v. Dulaney*, thereby approving the argument successfully made by Major Scott in the Circuit Court of Shenandoah, and which was not regarded as sound by the Court of Appeals in the decision of *Meem v. Dulaney*. This decision was one which attracted the attention of the profession throughout all portions of the State, and, as being a decision of the most vital importance with reference to the construction of our usury statutes and laws, it justly deserves to be ranked among the *causes celebres* of our Supreme Court.

From the foundation of the colony, the office of attorney-general, fashioned after its English prototype, the King's attorney-general, has been one of great dignity and importance, and, as a rule, has been filled only by lawyers of great reputation and recognized ability. To have been among the honored successors of Nicholas and Randolph, who, in the early days of the republic, filled so acceptably this great office, and, in later years, of John Randolph Tucker, Raleigh T. Daniel and others of like attainments, alone is sufficient to mark Major Scott as an accomplished lawyer. When we consider the great legal war that was going on at the time of his election, between the representatives of the English bondholders on the one side, the creditors of the commonwealth, and the State, as the debtor, on the other, we can readily understand the great dignity of his preferment. At no period in the life of the commonwealth was there such a demand for ability of the highest order and the most conscientious and laborious discharge of public duty on the part of the attorney-general than existed at the time of Major Scott's selection. A perusal of the adjudged cases of our Supreme Court of Appeals, known as the "coupon cases," during his incumbency, to say nothing of the causes decided in the Supreme Court of the United States and in the other Federal and State courts involving the validity of the tender of "coupons" for State taxes, which came up in every conceivable way, involving the construction and validity of the numerous acts of the legislature on the subject, will satisfy the student of the magnitude of the attorney-general's work at this important time. In addition to the immense draft which these cases made on the time and energies of Major Scott, numerous questions of taxation of a different character constantly arose for his settlement and decision. And, besides, there was the regular commonwealth's docket to be argued and disposed of by him at the sessions of the Court of Appeals at Richmond, Wytheville and Staunton. The painstaking and close study of the law which he had made throughout his professional career stood him in good stead, and he was able to meet every demand made upon him, always with credit to himself and generally with success for the commonwealth. The coupon cases managed by himself and his predecessor in office, the Hon. R. A. Ayers, were so numerous as to constitute a branch of our jurisprudence distinct in themselves. He was the State's adviser during the settlement of the State debt, known as the "Olcutt Settlement," which resulted in an honorable adjustment of the State's indebtedness with her creditors, forever, it is hoped, to be acquiesced

in by all parties to this agreement. If he had done nothing else during his term of office, this alone would entitle him to the highest meed of praise from every patriotic and true Virginian. In the case of *Brown v. Epps*, 91 Va. 728, he had the satisfaction of having the unanimous decision of the present Court of Appeals affirmatory of the contention so ably made by him in his argument of the case of *Miller v. Commonwealth*, 88 Va. 618. The Court of Appeals, speaking through Keith, President, in an able and exhaustive opinion, held that a statute which confers jurisdiction upon a justice of the peace to try such offences as are embraced in section 4106 of our Code, is constitutional, provided by a simple proceeding a trial by a jury can be had on appeal to a higher court. This was what he had earnestly striven to get the former Court of Appeals to hold in the *Miller* case, but to no purpose. To use his own language, taken from his diary, "after almost three years quiet waiting, I win and Judge Lacy's (who dissented in the *Miller* case) views of the law endorsed."

The *Miller* decision resulted in an amendment of our State constitution, and was the subject of much discussion at the time it was made.

At the memorial meeting of the Warrenton bar, Mr. James V. Brooke, his former partner, a lawyer of profound learning and a most resourceful advocate, said of him:

"As a lawyer he was highly accomplished, honorable and strictly conscientious. He stood infinitely above the level of the professional trickster. Money-making was held by him subordinate to the higher aims of the true lawyer's ambition. In his practice he was painstaking and laborious. He was eminently methodical. Each matter of business was made to await its turn. This habit may not have been consistent with speed, but it was conducive to accuracy. Conclusions thus formed were held by a strong tenure and enforced by vigorous argument. His speeches at the bar were not characterized by any attempt at rhetorical display, but they were luminous with the eloquence of thought and the earnestness of honest conviction, and yet his zeal was never marked by lack of professional courtesy or contempt for the opinion of his adversaries. He was well grounded in the science of the law and watched with care and apprehension the innovations of modern precedent. In a word, he was a lawyer in the highest, truest, noblest sense of the term, and a fit model for those who are to follow him."

Without any eloquence other than the "talent of giving force to

reason," he was a most successful and formidable lawyer. He understood human nature thoroughly, and exercised, by reason of his own strength of character and the consciousness of the purity of his own purposes, a wonderful influence over men. This gave him a powerful leverage before both court and jury, and enabled him to bring close to their hearts the resistless tide of his own earnest emotions and convictions. In the trial of a cause he never lost heart, but worked with a feeling of confidence to the end. He preferred to win by direct attack rather than by subtlety and subterfuge; and, however hard were the blows he struck in the management of a case, he rarely indulged in personalities, never in fact unless the provocation was great and the exigencies of the situation absolutely required it. He was a favorite with all the courts before whom he appeared. He argued a great many cases with reference to the State debt before the late Judge Bond of the Federal Circuit Court, so many, in fact, that, when the settlement of the debt was accomplished, the Judge, who possessed a keen sense of humor and who had been especially attracted to Major Scott because of the manly and courageous course he pursued in representing the Commonwealth's interests in the cases before him, sent him his photograph, with the inscription thereon, "Compliments of a 'Coupon Bond.' Othello's Occupation Gone."

As a member of the legislature he made a most capable and watchful public servant. He was true to the educational and social interests of the State. His Alma Mater, the University of Virginia, so dear to the hearts of her sons, had in him always an able champion. He met and defeated every attempt to cripple, by hostile legislation, this great institution of learning, which is the pride and glory of Virginia.

He was democratic to the core in that sense which recognizes the rights of all the people under the law, and which under the constitution and laws regards them as the source of all power. In his death the bar lost an honorable and useful member, the State a faithful servant.

His usefulness was not bounded by either the courts or halls of legislation. In the daily walks of life his influence was potential for good. The Protestant Episcopal Church in its councils had relied on him for years. He was a churchman in the most liberal and catholic sense; as was said of another: "He seemed not to regard the ceremonials of religion, but believed in the religion of feeling, of works rather than of opinion, a religion of love as broad and high as the Infinite, em-

bracing the whole human race, one that discarded the 'dry husks of creeds' and planted itself upon the broadest philanthropy and tolerance."

Man's domestic life is a sure and unerring index to his heart. The home life of Major Scott was beautiful.

"A loving wife beguiled him more
Than fame's emblazoned zeal."

This analysis of his character must suffice. The story of his life has been well told by others. He died in the prime and vigor of his intellectual strength and in the midst of his usefulness.

"Untainted by the guilty bribe,
Uncursed amidst the harpy tribe;
No orphan's cry to wound my ear,
My honour and my conscience clear;
Thus may I calmly meet my end,
Thus to the grave in peace descend."

JOHN H. INGRAM.

Richmond, Va.

"DYING WITHOUT ISSUE" IN VIRGINIA.

No one interested in questions relating to the law of Real Estate in Virginia can have read Prof. Graves' article in the February number of the REGISTER, entitled "Executory Interests," without pleasure and profit. The writer, gratefully acknowledging his indebtedness, ventures to make some suggestions which may possibly serve to modify in some degree one of the conclusions reached by Prof. Graves. He offers these suggestions with diffidence, due to his respect for the learning and ability of the eminent jurist who has so well debated the questions involved. The views presented seem to him reasonable, however, and he therefore ventures to give them publication.

Stripped of immaterial matter, the point to be herein considered is the effect, in case of a devise "to A for life, and if he die without issue, to B in fee," of the Virginia statute passed in 1820 providing that "*every limitation in any deed or will, contingent upon the dying of any person without heirs, or heirs of the body, or issue of the body, or children, or offspring, or descendant, or other relative, shall be construed a limitation to take effect when such person shall die, not having such heir, or issue, or child, or offspring, or descendant, or other*